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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,784	02/25/2004	Journey M. Ralbovsky	JOUR 36085US1	3696
116	7590	02/06/2006	EXAMINER	
PEARNE & GORDON LLP			QIN, JIANCHUN	
1801 EAST 9TH STREET				
SUITE 1200			ART UNIT	PAPER NUMBER
CLEVELAND, OH 44114-3108			2837	

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SF

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/786,784 Jianchun Qin	RALBOVSKY, JOURNEY M. 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 January 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 4-6,8 and 9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 5,6,8 and 9 is/are rejected.
- 7) Claim(s) 4 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)               |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ .  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Upon further consideration the finality of the office action of 11/16/2005 is hereby withdrawn and replaced by the following office action. Any inconvenience to the Applicant(s) is regretted.

### ***Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 8, the phrase "a piece" renders the claims indefinite because there is no definition about the structure of the "piece" given in the claims. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Thurman (5,952,591).

Thurman discloses, in a guitar having a back (12) and side surfaces (14), the improvement comprising a recess for receiving the breast of a player when the guitar is held against the chest, said recess being a hole (30, 32) located in said back surface adjacent the upper side surface when the guitar is held in playing position (Figs. 2 and 3).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Little (6,034,308).

With respect to claim 5:

Little discloses a method of making a guitar comprising the step of providing an opening through the back of a guitar adjacent its upper edge for receiving the breast of a player when the guitar is held in playing position (Fig. 4, and col. 4. lines 8-9).

Little does not mention expressly: forming a breast-accommodating insert, and mounting said insert in said opening in position to receive the breast of player when the guitar is held in playing position.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to cut out a part from said opening and insert the part back without making any changes to the part, since it has been held that constructing a formally integral structure in various elements involves only routine skill in the art.

*Nerwin V. Erlichman*, 168 USPQ 177, 179.

With respect to claim 6:

The teaching of Little includes: shaping said opening, which contains said insert, to fit the breast of a female instrumentalist (Fig. 4, and col. 4. lines 8-9).

With respect to claim 8:

Little discloses, in a guitar having a back and a side surfaces (Fig. 1), the improvement comprising a recess for receiving the breast of a player when the guitar held against the chest (Fig. 4, and col. 4. lines 8-9).

Little does not mention expressly: said recess being a piece inserted in said guitar and being located in said back surface adjacent the upper side surface when the guitar is held in playing position.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to cut out a part from said opening and insert the part back without making any changes to the part, since it has been held that constructing a formally integral structure in various elements involves only routine skill in the art.

*Nerwin V. Erlichman*, 168 USPQ 177, 179.

8. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and also amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Reasons for Allowance***

9. The following is an examiner's statement of reasons for allowance:

The primary reason for the allowance of claim 4 is the inclusion of the limitation that said piece is cup-shaped to conform to a specific breast size of an intended user of said guitar. It is this limitation found in the claim, as it is claimed in the combination that has not been found, taught or suggested by the prior art of record, which makes this claim allowable over the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Response to Arguments***

7. Applicant's arguments filed 01/17/06 with respect to claim 74-6, 8 and 9 have been fully considered but are moot in view of the new ground(s) of rejection.

Claims 5, 6, 8 and 9 are rejected as new grounds have been found from the prior art references (U.S. Pat. No. 5952591 to Thurman, and U.S. Pat. No. 6034308 to Little) to teach the claimed invention. Detailed response is given in sections 4-7 as set forth

above in this Office Action.

***Contact Information***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jianchun Qin whose telephone number is (571) 272-5981. The examiner can normally be reached on 8:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (571) 272-2107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jianchun Qin  
Examiner  
Art Unit 2837

JQ   
February 1, 2006



MARLON T. FLETCHER  
PRIMARY EXAMINER